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SUMMARY RECORD OF THE 1432nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 20 July 1995, at 10.05 a.m.

Chairman: Mr. AGUILAR URBINA

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Fourth periodic report of the United Kingdom of Great Britain and Northern Ireland

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GE.95-17671 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of the United Kingdom of Great Britain and Northern Ireland (CCPR/C/95/Add.3)

1. At the invitation of the Chairman, Mr. Halliday, Mrs. Evans, Mr. Bramley, Ms. Spencer, Mr. Berman, Ms. Stewart, Mr. Barnard and Ms. Doherty (United Kingdom of Great Britain and Northern Ireland) took places at the Committee table.

2. The CHAIRMAN welcomed the delegation of the United Kingdom and remarked that Mrs. Higgins had long been a guiding light of the Human Rights Committee. Regrettably, the current session would be her last. He wished to thank her personally for teaching him how to be a member of the Committee; he well knew the esteem and affection in which she was held by all members of that body. Her election to the International Court of Justice (ICJ) was an honour to the Committee, especially so since, in the 50-year history of the United Nations, she would be the first woman to hold a judgeship on that Court.

3. Mr. HALLIDAY (United Kingdom) said that the fourth periodic report (CCPR/C/95/Add.3) was intended to be a factual account of measures adopted by the Government of the United Kingdom since the occasion of its previous appearance before the Committee in 1991 and of other key developments related to the exercise in that country of the rights recognized under the Covenant. It should perhaps be recalled that, while the United Kingdom was a unitary State, comprising England, Wales, Scotland and Northern Ireland, and the legal jurisdictions of the first two were different from those that existed in the second two, similar principles obtained throughout the United Kingdom. The report had endeavoured to provide an overview of the ways in which those principles applied in the various parts of the Kingdom, indicating as well where substantive differences arose in practice. He wished to note that the supplement to the fourth periodic report in respect of Hong Kong would be submitted the following day, while the report on the Crown dependencies and other dependent territories would be submitted at a later date. Since some time had elapsed since the submission of the United Kingdom report, a description of recent developments might prove useful to the Committee.

4. The Government's position in respect of Northern Ireland remained as set forth in the Joint Declaration issued by the Governments of the United Kingdom and Ireland at Downing Street on 15 December 1993, which was summarized in paragraphs 13-17 of the report. In February of the current year, the British and Irish Governments had published two documents entitled "Frameworks for the Future". Part I, "A Framework for Acceptable Government in Northern Ireland", set forth the views of the British Government with regard to the development of new democratic institutions in that country. Part II, "A New Framework for Agreement", which had been elaborated jointly by the British and Irish Governments, offered recommendations for the development of relationships on the island of Ireland and between those Governments. It also contained proposals for cross-border institutions with executive, harmonizing and consultative functions. Significantly, those papers contained proposals for

discussion, not conclusions. His Government firmly held that any eventual settlement would require agreement among the parties of Northern Ireland, the people of Northern Ireland (voting in a referendum) and the Westminster Parliament. The United Kingdom Government had invited the main constitutional parties to engage in a discussion with regard to those texts; discussion with some parties had begun.

5. On 31 August 1994, the Provisional Irish Republican Army (IRA) had announced a total cessation of hostilities. The Combined Loyalist Military Command had followed suit with a similar announcement on 14 October. The Government had then announced the start of a dialogue, with Sinn Fein and two loyalist parties, the Progressive Unionist Party and the Ulster Democratic Party, whose central purpose was to explore the basis on which those parties would come to play the same part as did the current constitutional parties in the public life of Northern Ireland, in accordance with their political mandates. Preparatory talks were currently being led by the Minister for Political Developments at the Northern Ireland Office. The Government's aim was to convoke an inclusive talks process, in which political parties would take part armed only with their electoral mandates. It had indicated to Sinn Fein as well as to the loyalist parties that they should not expect to participate in inclusive talks until substantial progress had been made on the decommissioning of illegally held arms and explosives.

6. Her Majesty's Government remained fully committed to seeking, through a process of political dialogue, a widely acceptable and comprehensive political accommodation encompassing the relationships within Northern Ireland, on the island of Ireland, and between the British and Irish Governments, and was working towards that end.

7. Furthermore, since the time of the previous report, public interest in the United Kingdom's human rights obligations as well as in its constitutional arrangements and developments had grown. The previous year had seen a lively debate on those issues in both Parliament and the media, in which senior judges, political parties and the Government had taken part. In addition, the significant number of submissions and reports from non-governmental organizations (NGOs) throughout the United Kingdom on the occasion of the preparation of the fourth report testified to the high level of importance attached to the protection of human rights in that country.

8. The draft Human Rights Bill had been introduced as a Private Members' Bill measure into Parliament in late 1994, and had been debated during the first half of 1995 in the House of Lords. Designed to incorporate the European Convention on Human Rights into British domestic legislation, the Bill had sparked considerable debate in Parliament, including among members of the senior judiciary. The Bill had not been supported by the Government, nor had it made progress in the House of Commons. The series of parliamentary debates to which it had given rise in the House of Lords had, however, shown the high level of interest accorded by British institutions to developing measures to protect human rights in the country, and had led the Government to review its relevant policies.

9. It had long been held in the United Kingdom that freedoms - which included those guaranteed by the Covenant and by the European Convention on

Human Rights - were naturally possessed by all members of society and need not be conferred. The United Kingdom enjoyed regular elections with full adult suffrage, parliamentary sovereignty, ministerial accountability, a free press and supervision by the courts of executive action by way of judicial review proceedings. That practice permitted executive action to be tested against broad principles of rationality, fairness, justice and legality, not themselves conferred by the Covenant or the Convention. In the view of the Government, the incorporation of those instruments was not a measure of the health of human rights in British society.

10. The British courts, demonstrating that they were indeed aware of that country's human rights obligations, increasingly referred to both the Covenant and the Convention in the course of their deliberations. The significance of that phenomenon could not be overestimated. The Government nevertheless continued to hold firmly to the position that those human rights obligations should not be incorporated into British law. The record indicated that in cases where they could duly invoke the terms of human rights instruments without trespassing on the legislative prerogative of Parliament, the courts had been scrupulous in so doing. Therefore, the fact that neither the Covenant nor the Convention were incorporated into domestic law did not preclude their use by the courts.

11. The practice of judicial review of executive action by the courts had likewise continued to evolve; recourse to that remedy was more widely available, and the necessary safeguards had been reinforced. The range of applicants who could apply for a judicial review had also been broadened; the courts could now entertain an application for review in cases of public interest in which no single individual was directly involved.

12. Efforts to strengthen the position of ethnic minorities and to eliminate all forms of racial and sexual discrimination had continued. It should be recalled that the United Kingdom's anti-discrimination legislation was among the most comprehensive of its kind in Europe. Proposals had been mooted for the introduction of race relations legislation into Northern Ireland. Many programmes had been launched to regenerate the economy, particularly in the inner cities. Criminal legislation addressing the problem of race-related crimes had recently been reviewed, resulting in the introduction of the offence of intentional harassment into the provisions of the Criminal Justice and Public Order Act 1994. That provision enhanced the ability of the police to deal with cases of serious harassment and prohibited the distribution of racially inflammatory material.

13. The Government was also endeavouring to establish a comprehensive ethnic monitoring system within the criminal justice system. Ethnic monitoring by the police of all arrests, cautions and criminal searches had begun, on a voluntary basis, on 1 April 1995; on 1 April 1996 it would become compulsory.

14. Furthermore, the Government was eager to encourage greater representation by ethnic minorities and women in public services as well as their appointment to public bodies. While efforts had been made to encourage the recruitment of ethnic minorities and women into, inter alia, the police and civil services, much progress remained to be made.

15. Significant improvements had been achieved in prison conditions in the United Kingdom: the housing of prisoners three to a cell had been eliminated and the housing of two to a cell had been halved. Eighty-two per cent now resided in uncrowded accommodation; more than 6,000 new places were planned. Ninety-five per cent of the prison population currently had access to sanitation facilities; 100 per cent was the goal. Prisoners could use card telephones in all establishments; their entitlement to receive visitors had doubled.

16. Other recent developments included the virtual elimination of sex-based discrimination from immigration controls; an enhanced right of appeal for asylum-seekers; greater transparency in the matter of setting life "tariffs" for convicted murderers; the imminent creation of the Criminal Complaints Review Commission (a new independent body for handling miscarriages of justice); and, in Northern Ireland, enhanced procedures for assessing complaints about the conduct of the military and the independent review of police detention centres.

17. Cases inevitably arose in which conflicting considerations required the Government to take difficult but vital decisions affecting the protection of rights. The Government sought, for example, to protect the right of assembly, but it also needed to ensure that those involved in lawful pursuits should not be disrupted. It sought to safeguard the right to privacy, but it also needed to ensure that children should be protected from those who might injure or abuse them. He expected that the dialogue would focus on such conflictual areas, as well as on constitutional issues. It was his hope that the Committee would bear in mind the broad spectrum of rights and freedoms enjoyed by the peoples of the United Kingdom. Finally, he assured the members of the Committee that its comments would be transmitted to the relevant ministers, and widely disseminated among the Government, the Parliament and the wider public.

18. Mr. BERMAN (United Kingdom) said that in the previous 10 years, the Covenant and the work of the Committee had grown steadily in their importance to the intergovernmental relations of the United Kingdom. He wished to assure the Committee that the British Government not only accorded considerable attention to the role of the Committee in receiving and considering the reports by the United Kingdom in respect of itself and its dependent territories, but also closely followed its consideration of the reports of other States parties.

19. It was a particular pleasure to be present at the last session to be graced by Mrs. Higgins. The United Kingdom had indeed taken pride in her membership on the Committee. Her tireless activities as a teacher, public lecturer and adviser had furthermore added greatly to the weight and respect that the Committee carried in that country. Her election the previous week to a seat on the ICJ by an overwhelming majority of States Members of the United Nations reflected the respect in which she was held. Her distinguished record of achievement had in fact been recognized by the Queen, who had bestowed upon her one of the United Kingdom's highest State honours. The United Kingdom intended to present a candidate for the election to fill the forthcoming vacancy on the Committee.

20. Finally, the Foreign and Commonwealth Office had deeply pondered the Committee's general comment 24 concerning issues related to reservations to the Covenant, and had conferred with colleagues in other States parties on that matter. While they gratefully acknowledged the serious and thoughtful attention drawn by the Committee to an undoubtedly serious problem, they disagreed with its conclusion. They were cautious with regard to the suggestion that the international regime governing treaty reservations was inappropriate for such human rights instruments as the Covenant, and with the conclusion that the Committee, despite the lack of a specific provision pertaining thereto, was open to replacing that legal regime with another. He nevertheless understood the general comment to be part and parcel of the Committee's dialogue with the State party, and consequently assumed that the Committee would be eager to hear its views. In that spirit, the British authorities had prepared a paper containing their observations, in accordance with article 40, paragraph 5, of the Covenant; that text would be provided to the Committee shortly.

21. The CHAIRMAN invited the United Kingdom delegation to respond to section I of the list of issues, which read:

"I. Constitutional and legal framework within which the Covenant is implemented; non-discrimination and equality of the sexes; and rights of persons belonging to minorities (arts. 2, 3 and 27)

(a) Has any consideration been given to incorporating the Covenant into domestic law and adopting a bill of rights pursuant to the undertaking of the delegation during the consideration of the third periodic report to review governmental policy in that regard in the light of the Committee's comments (see A/46/40, para. 357)?

(b) Has any further consideration been given by the Government to the possibility of reviewing its reservations to the Covenant and to withdrawing them?

(c) In view of the statement by the delegation during the consideration of the third periodic report that the Covenant differs from the European Convention on Human Rights in certain substantive respects and given the fact that most States parties to the European Convention on Human Rights are at the same time parties to the first Optional Protocol, does the Government envisage to ratify this Protocol in the near future or to provide other independent remedies in case of alleged violations of human rights?

(d) Have recent improvements of the situation in Northern Ireland created a better environment for the enjoyment of human rights and what are the prospects for further improvements?

(e) Please clarify whether the proposals from the Equal Opportunities Commission to strengthen legislation prohibiting discrimination between men and women, as referred to in paragraph 62 of the report, have led to the adoption of any specific measures or legislation.

(f) Please clarify why the only remaining sexually discriminatory provision of the Immigration Rules has not yet been repealed but is still on the books although not used in practice. Are the authorities barred from applying this provision (see para. 71 of the report)?

(g) Given the very few individual applications that were eventually settled by the Commission for Racial Equality, please elaborate on the effectiveness to date of the Commission in addressing problems connected with racial discrimination (see para. 33 of the report).

(h) Please comment on practical measures taken to ensure the effective enjoyment by persons belonging to minorities of their rights under article 27 of the Covenant, in particular in so far as the recognition of Celtic languages in Northern Ireland and Scotland and the promotion of regional cultures are concerned."

22. Mr. HALLIDAY (United Kingdom) responding to question (a), said that the Government had reviewed the arguments for and against the incorporation of the European Convention on Human Rights into British law in the context of the parliamentary debates surrounding the draft Human Rights Bill. The Government's position remained unchanged since the time of its last appearance before the Committee. In its view, incorporation of either the Covenant or a bill of rights into domestic law was neither necessary nor desirable. It was unnecessary to incorporate the Covenant because current constitutional arrangements already established individual rights and freedoms under the law. It was unnecessary to incorporate a bill of rights because such rights were already inherent in the United Kingdom's legal systems and were protected by them and by Parliament until the point where that body determined that the needs of society were such that they should be restricted in some way. Incorporation of either was considered undesirable because it would alter the long-established balance among Parliament, the executive and the courts, in which Parliament was primarily responsible for matters affecting the rights and duties of individuals. In the view of the British Government such a fundamental change to the United Kingdom's constitutional arrangements should be made only if and when a clear need arose and a national consensus emerged. Members of the Committee would surely recall that the United Kingdom had in 1966 accepted the right of individual petition under the European Convention on Human Rights as well as the jurisdiction of the European Court of Human Rights, and on those occasions when that body had determined that breaches of the Convention had occurred, steps had at once been taken to remedy the matter. Having reviewed the record of those countries that had incorporated the European Convention on Human Rights into their legal arrangements, the Government found no evidence to support the notion that such a step would provide greater safeguards for individuals. The provisions of the Covenant were admittedly broader in some respects than those of the Convention. However, in the context of a legal system that itself safeguarded rights and freedoms, the Government had deemed that the jurisdiction of the European Court of Human Rights provided sufficient additional safeguards.

23. Replying to question (b), he said that his Government kept its reservations to the Covenant under constant review to see whether it could withdraw any of them. It had, however, concluded that it was unable to do so for the time being.

24. Turning to question (c), he said that his Government had no plans to ratify the first Optional Protocol. The domestic courts in the United Kingdom continued to play an effective role as defenders of human rights and, as he had noted in his reply to question (a), the United Kingdom had accepted the right of individual petition under the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights since 1966. That system provided means of redress that were not available under the Covenant, since individuals had access to a compensatory mechanism and judgements were binding on the United Kingdom. Although the Covenant contained guarantees that were not covered by the European Convention, the Government did not consider them sufficient to justify ratifying the first Optional Protocol since they lent themselves more naturally to the type of scrutiny provided for by the current periodic review. There were also other independent remedies such as the Prisons Ombudsman in England and Wales, the Prisons Complaints Commissioner in Scotland and the Independent Assessor of Military Complaints Procedures and the Independent Commissioner for the Holding Centres in Northern Ireland.

25. In response to question (d), he said that the cease-fires in Northern Ireland had contributed greatly to restoring the basic human right to life. The reduced threat of violence had enabled the Government to take such practical measures as opening all border roads between Northern Ireland and the Republic of Ireland, reducing military patrolling and confining it mainly to rural areas where contact with the public was less likely, and withdrawing over 1,000 soldiers from Northern Ireland. Emergency powers were being used less and less frequently. Fewer people were being detained under the Prevention of Terrorism Act and fewer were being interviewed at the holding centres: 27 people in May 1995, compared with 154 a year earlier. Periods of detention were shorter: nobody had been held for more than 48 hours in May 1995, whereas 69 persons had been so held in May 1994.

26. In spite of the reduced use of emergency powers, terrorist organizations remained active, retaining large stocks of weapons and recruiting and training new members. Extremely vicious punishment beatings, robberies, threats and intimidation continued to occur.

27. The Government had always regarded the emergency legislation as a temporary measure, so that both the Prevention of Terrorism Act and the Emergency Provisions Act had to be renewed each year with the approval of Parliament after an independent review. As the threat of terrorism diminished, so also would the need for emergency legislation. The Government would not hesitate to suspend provisions for which powers were available as soon as the need for them disappeared. The independent reviewer in 1994, Mr. John Rowe QC, had recommended that the emergency legislation should be renewed for a further year. He would come back to that point in a reply under section II of the list of issues.

28. In March 1995, the Government had published a consultation paper entitled "Policing in the Community", which had sought views on the need for reform of the policing structures. The Government intended to bring forward firm proposals in the autumn in the light of the responses to the paper and the continuing dialogue between the police and the public in Northern Ireland.

29. With a view to reconciling the interests and traditions of all sections of the community in Northern Ireland, the Government was prepared to take further steps to consolidate the protection of rights, enhancing the credibility of local political institutions under any new system of devolved Government. The "Framework" documents reflected the Government's willingness to take such steps and its lack of preconceptions about which rights might require additional protection or how such protection might be provided. That subject remained open for discussion with the parties and between the two Governments as part of the political process described in his initial statement.

30. In reply to question (e), he said that the Government had taken action on the proposals of the Equal Opportunities Commission. With a view to reducing delays in procedures to achieve equal pay for work of equal value, steps had been taken to speed up the preparation of the expert's report used in those procedures, to allow tribunals to exercise discretion in calling for such reports, to reduce delays resulting from one of the defences available under the procedures and to abolish the "no reasonable grounds" test.

31. Turning to question (f), he said that no suitable opportunity had yet been found to repeal the sexually discriminatory provision under section 5 of the Immigration Act 1971, but the authorities had not been applying it as a matter of policy.

32. On question (g), he pointed out that the Commission for Racial Equality did not itself have authority to settle cases. Paragraph 33 of the report referred to instances in which the Commission was assisting a party in a case in which both parties ultimately agreed to settle. The Commission could not act in place of a solicitor or barrister in court but could appear at industrial tribunals on behalf of complainants. It had separate powers to initiate proceedings under the race relations legislation in cases where it considered that persons were engaging improperly in discriminatory practices. The number of applications registered with the Commission and the level of assistance provided were not to be regarded as the only data by which to judge the effectiveness of its work. The Government believed that the Commission was highly effective in its threefold duty of working towards the elimination of racial discrimination, promoting equality of opportunity and good race relations, and keeping the Race Relations Act under review.

33. In response to question (h), he said that it was a fundamental objective of his Government to enable members of minority communities to participate fully in the life of the nation, which had shown itself capable of accommodating a variety of religions and cultures while preserving the established framework of values cherished in the United Kingdom. The Government's funding of the Arts Councils helped to develop and increase access to culturally diverse arts.

34. With regard to Celtic languages, the Irish-language movement in Northern Ireland had grown in significance in recent years. The Government had offered financial support amounting to £2 million in 1994-1995 to projects with an Irish-language dimension. Since May 1995, legislation banning street nameplates in languages other than in English had been repealed. The Irish language was taught in many schools with State financial assistance and in recent years groups of parents had established independent schools teaching entirely through the medium of Irish. Three of those, at primary level, had been accepted for full grant aid. An Irish-medium secondary school in Belfast, although too small for full grant aid, had been awarded special financial assistance of £100,000 a year for a two-year period.

35. In Scotland, support for the Gaelic language centred on three main areas: support amounting to £8.9 million had been allocated in the current financial year for the production and transmission of some 170 hours of television programmes in the Gaelic language; grants of £1.9 million had been allocated for education through the medium of Gaelic; and £0.5 million had been allocated to groups working with the Gaelic community on projects designed to promote the language and culture.

36. The CHAIRMAN invited the members of the Committee who so wished to put additional questions, in the light of the replies by the delegation of the United Kingdom to section I of the list of issues.

37. Mrs. CHANET thanked the delegation for allowing the Committee to take advantage of the extremely valuable services of Mrs. Higgins for so many years. It was particularly pleasing to learn of the election to the ICJ of a member of the Committee, a woman and a European.

38. Although the report had been submitted on time and had sought to clarify a rather complex situation in terms of legal structures, she was disappointed to note that little progress had been made on the first three questions on the list of issues, which had been raised quite emphatically in 1991 by almost all members of the Committee.

39. With regard to the question of a bill of rights, Mr. Halliday acknowledged that an attempt to have the European Convention on Human Rights incorporated into domestic legislation had been opposed by the Government of the United Kingdom. What exactly were the obstacles and complexities to which the Government referred? Were they the same as those impeding its incorporation of the Covenant?

40. Nor was there anything new on the subject of reservations. The Committee's observations in general comment 24 to the effect that human rights treaties were different from treaties between States and that a large number of reservations tended to undermine the effective implementation of the Covenant were matters of common sense and did not require complex legal analysis. In three of its long list of reservations, those concerning articles 12, paragraph 4, and 24, paragraph 3, and that concerning military discipline, the United Kingdom had reserved the right to derogate "from time to time". Such vague wording with respect to restrictions of rights was manifestly a source of legal insecurity.

41. How could the United Kingdom maintain that there was nothing to gain from ratifying the first Optional Protocol when it admitted that there were guarantees in the Covenant that did not exist in the European Convention on Human Rights? Perhaps the authorities felt that they already had enough difficulties addressing individual petitions under the Convention without dealing with additional individual complaints under the Covenant.

42. With regard to the right to self-determination, she asked whether human rights aspects formed part of the current negotiations on a political settlement in Northern Ireland, for example the proposed review of the two pieces of emergency legislation. The Government had announced the setting up of an independent commission on the subject. How would the members of that commission be chosen? Were the questions of equality of opportunity and political and religious discrimination in employment and other areas in Northern Ireland being discussed in the context of the negotiations?

43. Mr. LALLAH joined in congratulating Mrs. Higgins on her election and paid tribute to her contribution not only to the work of the Committee but also to human rights and international law in general.

44. Although he had been encouraged to hear in the delegation's opening statement of the progress achieved in a number of areas, he was greatly disappointed at the manner in which the last dialogue had been treated. He drew particular attention to paragraphs 20, 23 and 27 of summary record CCPR/C/SR.1045 concerning the third periodic report.

45. He was not at all impressed by the reasons given for non-incorporation of the Covenant in the domestic legislation of the United Kingdom and was perplexed by the Government's attitude to the first Optional Protocol. He was disturbed at the failure to take account of article 2, paragraphs 3 (a) and (b), of the Covenant. It was not only a matter of people being aware of human rights through discussions in the House of Lords, the media and NGOs. What was at stake was the availability of remedies for citizens of the United Kingdom whose rights were recognized under the Covenant.

46. With regard to article 9, paragraph 4, for example, he had it on good authority that where a person was detained in immigration cases there was no access to a court nor was there a right to have a decision of the immigration authorities reviewed by a court.

47. With respect to articles 7 and 10, paragraph 1, he asked whether common law recognized the right not to be subjected to cruel, inhuman or degrading treatment or punishment, a right that was not included in the European Convention on Human Rights. Did a person have to sustain some kind of physical injury before a remedy became available in such cases?

48. Turning to article 14, paragraph 5, concerning the right to have a conviction and sentence reviewed by a higher tribunal according to law, he asked what was the judicial authority that had a right to review such sentences as the mandatory death sentence and detention during Her Majesty's pleasure. He gathered that it was the Executive that had the final say.

49. With regard to articles 17 and 23 on privacy and the family, he had information to the effect that an alien parent who was forced to leave the country did not have absolute access to a child remaining in the United Kingdom. Apparently the right to privacy was not secure under common law. He had heard of a television actor whose privacy had been violated and who had had no remedy whatsoever.

50. Under article 26 of the Covenant, States parties were obliged in their executive, legislative and judicial behaviour to treat all persons equally; he found it inadmissible that the report accorded just one sentence specifically to such a vitally important provision. In Northern Ireland, particularly, there had to be a public perception, despite the ongoing restrictions, that the attitude of the authorities met that basic standard of equality before the law. To give just two examples, the authorities' failure to publish the findings of the Stalker Inquiry, and the handling of the Clegg case, where a sentence found to be perfectly justified by the highest judicial tribunal had been changed by decision of the executive, were, to say the least, of little service to that perception.

51. He commended to the attention of the United Kingdom delegation the Committee's general comment 23, on article 27 and the right of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion and to use their own language. He was by no means certain that the very many such minorities in the United Kingdom, and notably Gypsies and immigrants from Asia and elsewhere, were able fully to enjoy those rights or that the benefits accorded by the State - for example the grants to schools for linguistic purposes mentioned by Mr. Halliday - were equitably distributed. A frank explanation by the delegation of any difficulties encountered would at least help to advance the dialogue.

52. One of the most compelling reasons in favour of a Bill of Rights was to be found in the obligations set forth in article 2, paragraph 3, of the Covenant. He could not agree that accession to the European Convention on Human Rights and acceptance of the jurisdiction of the European Court took care of virtually all the undertakings entered into under the Covenant. Nor did he by any means share the scepticism of the United Kingdom Government, reflected in paragraph 6 of the report, as to whether ratification of the Optional Protocol would "significantly" enhance the protection of individuals under the United Kingdom's jurisdiction. He and the other members of the Committee wished very much to demonstrate the opposite. As to the remark that the European Convention was better known in the United Kingdom than the Covenant, was that not simply because the Government was more committed in its support for the former?

53. Notwithstanding his critical remarks, he believed that the Committee undoubtedly had a great deal to learn from judicial thinking in the United Kingdom. The elaboration of a proper Bill of Rights, or at least the opportunity and means of considering and discussing the reasoning behind court decisions, would make that learning process much easier.

54. Mr. MAVROMMATIS joined in the tributes paid to the contribution made by Mrs. Higgins to the Committee's work, notably under the Optional Protocol. It was a compliment to the Committee that her country had nominated a person of such calibre to its ranks.

55. In the present troubled times, countries such as the United Kingdom which had neither a written constitution nor a bill of rights and in which there was no automatic incorporation of the provisions of international treaties into domestic law needed as many individual petition mechanisms as possible. He was especially puzzled by the United Kingdom's enthusiasm, on the one hand, for the restructuring of such mechanisms under the European Convention and its reluctance, on the other hand, to accede to the Optional Protocol of the International Covenant.

56. The United Kingdom, as a permanent member of the United Nations Security Council and in other roles, such as that of guarantor in Cyprus, was playing an important and constructive part in the quest for solutions to regional problems. That being so, it was greatly to be hoped that events in Northern Ireland, which had undoubtedly taken a better turn of late, would prove lastingly positive. Any action that might cast doubts on the credibility of the peace process, or even place it in jeopardy, should be avoided. The release of a convicted murderer already referred to; shortcomings in the investigation of such crimes as the murder of the solicitor, Mr. Finucane; and the failure to set in place a proper mechanism for handling complaints were undoubtedly prejudicial to that cause. The people must be convinced that effective guarantees existed against exceptional procedures leading to unsatisfactory results.

57. Ms. EVATT observed that there was much to admire and be thankful for in the democratic institutions and legal system of the United Kingdom: a country that produced the likes of Mrs. Higgins could not be praised too highly. That being said, the greater the expectations vested in those institutions and that system, the greater the disappointment - and indeed anger - when they were found wanting.

58. In her view, many of the controversial issues that would be alluded to in one form or another during the coming discussion could have been avoided if there were effective legal protection of rights under the Covenant in the United Kingdom.

59. She was especially concerned at the persistent claim that the possession of rights and freedom was inherent in United Kingdom society and could only be restricted by a democratic decision of Parliament, whose role was confined to considering the possible need for limitations. The assumption that the rights and freedoms recognized in the Covenant were inherent in common law and that Parliament had no role in conferring such rights and freedoms did not stand scrutiny: their existence depended in very great measure on statutory law, and she cited the equality of women, the rights of children, complaints against the police, the institution of the ombudsman, and the issues of prisoners' and trade union rights as instances. But there were also areas where statutory law was inadequate to provide the remedies needed, for example in cases of discrimination on grounds of race or gender or the miscarriage of

justice or, conversely, where statutory law had encroached on freedoms, by setting limitations to a fair trial, the freedom of speech, the rights of detainees, impunity and so on, overturning in the process another assumption, namely that without any restraint in its powers, Parliament would always refrain from infringing or removing people's rights.

60. Her regretful conclusion was that, where neither the common law nor statute provided for a right, there was no right; and that where statutes removed or limited rights, there were in many cases no remedies outside those provided by the European Convention. It was her understanding that most of the cases taken to the European Court of Human Rights did in fact involve alleged violation of the International Covenant by legislation, over which the principles of legality, fairness and natural justice could not prevail. Her misgivings on that score were reinforced by the absence of any mechanism within the parliamentary system itself to examine rigorously and reject proposed laws which might encroach on rights. If Parliament could not accept that challenge, then the balance between Parliament and the courts might need to be changed.

61. She invited the United Kingdom delegation to consider, as each issue was raised by members of the Committee, whether the United Kingdom might not avoid the risk of violating the standards to which it was obviously committed and whether it would not better fulfil its obligations under the Covenant if the courts were empowered to determine whether laws and policies met international standards.

62. Concerning the dialogue on Northern Ireland and article 25 of the Covenant, she asked to what extent current arrangements actually ensured that the parties to the negotiations represented and reflected all the different elements of society, including minorities, and - consequently - that the different views of each segment of the community were given proper weight.

63. The projected referendum would be a particularly important act of autonomy and self-determination, provided that it did not take place at the expense of human rights. She inquired how the same principle would be applied, mutatis mutandis, in response to Scottish and Welsh aspirations.

64. Lastly, she asked whether the United Kingdom report to the Committee and the record of the discussions would be widely distributed in the United Kingdom.

65. Mr. BÁN voiced pleasure at the distinction conferred on Mrs. Higgins and sadness at the prospect of her departure. The ICJ's gain was certainly the Committee's loss.

66. He commended the report as a frank, informative and in many respects convincing document. On the other hand, he had found little direct sign, either in the report itself or in the oral introduction, of the promised response to critical remarks by the Committee during the discussion of its predecessor. Indeed, an analytical comparison made by the Secretariat of the contents of the third and fourth periodic reports showed that in many instances the latter was silent on points raised in the former or in the ensuing discussion. Against that background, he was somewhat sceptical about

the assurances given in paragraph 8 of the document under consideration that the report itself and the proceedings in the Committee would be given wide publicity in the United Kingdom.

67. A broad range of submissions claiming violations of rights under the Covenant had been received by the Committee from active and responsible NGOs. He asked whether those bodies had been consulted or their experience referred to in the course of preparing the periodic report. At all events, that should be the case in future.

68. Addressing in some detail the reservations made by the United Kingdom with respect to the Covenant, he said that the withdrawal of the reservation to article 25 was to be welcomed. He asked whether the changes in the Immigration Rules announced in paragraph 404 of the report had come into force; and, if so, whether the reservation concerning the first sentence of article 23, paragraph 4, was still necessary; similarly, he wondered whether the appreciable improvements reported in prison conditions did not render obsolescent the reservation in respect of article 10, paragraphs 2 (b) and 3.

69. Mr. KLEIN said that he would miss Mrs. Higgins, both as a patient mentor in his efforts to familiarize himself with the Committee's workings and as a most agreeable neighbour at the Committee table.

70. Concurring with much of what had already been said on the United Kingdom report, he stressed that failure to incorporate treaty provisions into domestic law and to accede to the Optional Protocol were detrimental to the whole understanding of human rights in the United Kingdom. Scant attention by the Government to the Covenant, except for the purposes of inter-State relations, would mean that it slipped from public view and - more significantly - from the attention of judges, lawyers and all responsible for the application of the law.

71. Conversely, action by the United Kingdom to make good those two basic omissions, which were all the more deplorable given that country's historical record with regard to the international development of human rights, would contribute much to the achievement of a broader common basis with regard to respect for human rights throughout Europe and more particularly within the European Union.

72. Concerning Northern Ireland, he first noted with satisfaction the improvement of the situation and then suggested that present circumstances appeared to justify the most generous possible application of the principle of proportionality in the imposition and implementation of emergency measures. He noted with particular satisfaction the contents of paragraph 17 of the report, especially the acknowledgement of the right to self-determination, and inquired about the attitude of the authorities concerning claims relating to that right emanating from other parts of the United Kingdom.

73. Mr. EL SHAFEI joined in congratulating Mrs. Higgins on her well-deserved election; the Committee would no doubt have the opportunity to express its pride and to place on record its appreciation of her valuable services. Concerning the United Kingdom report, he observed that many important points had already been made. He would not repeat them, but merely say that he

looked forward to the delegation's replies on the matter of the constitutional and legal status of the Covenant, the issue of reservations, and questions relating to the application of articles 1 and 25 in other parts of the United Kingdom as well as Northern Ireland.

74. In relation to minorities and article 26 of the Covenant, he remarked that almost 20 years had passed since the adoption of the 1976 Race Relations Act by the British Parliament. Yet levels of discrimination remained alarmingly high, while ethnic minorities figured prominently among the disadvantaged segments of the population in countless respects. In one way or another, they continued to face harassment, abuse and physical violence, while the police not only failed to provide sufficient protection but were themselves also guilty on occasion of subjecting members of those minorities to racist, arbitrary and discriminatory practices and treatment.

75. Amnesty International had documented allegations of cruel, inhuman or degrading treatment during the forcible deportation of asylum-seekers and immigrants. Concerns had been expressed about the accountability of immigration officials and the increasing use of private security firms to carry out forcible deportations. Ethnic minorities were not fairly represented in government or in many of the professions. The Race Relations Act 1976 did not provide sufficient protection for minorities in the United Kingdom. In 1991, the Commission established by that Act had reported continuing evidence of widespread discrimination on racial grounds, which exposed the complacency of those who contended that the Act was fulfilling its intentions; the Commission stressed that a stronger legal framework was needed. He wondered whether the delegation really believed that in the light of such conditions the situation did not require more updated legislation to give effect to the human rights guarantees contained in the Covenant under articles 2, 3, 26 and 27. In view of the absence of legislation outlawing discrimination on grounds of race in Northern Ireland, did the delegation believe that the introduction of anti-discrimination legislation there was an urgent matter? Did the Government of the United Kingdom intend to introduce such legislation, and if so what would be the time-scale and what would be its substance?

76. Mr. FRANCIS fully supported Mr. Lallah's contention that article 2 of the Covenant would be the testing ground for the United Kingdom with regard to compatibility with the requirements of the Covenant, but in his view another testing ground would be certain aspects of its treatment of minorities and prisoners. With regard to article 2, he said that the authorities in the United Kingdom had in recent years been discriminating against targeted groups of people from Africa, people of Afro-Caribbean origin and other minority groups, especially with respect to the practice of "stop and search"; according to one academic study, 42 per cent of people who were stopped and searched in the United Kingdom were from those three groups.

77. He then referred to the specific case of a black prison auxiliary in Brixton called Claud Johnson, who, according to the Commission for Racial Equality, had been subjected to ostracism and exclusion for three years because he had had the courage to report to the authorities that he had seen five prison officials beating a black man. The Commission for Racial Equality had taken up the matter without receiving any satisfaction from the prison

authorities, and the man had been awarded £28,000 for aggravated damages and wounded feelings. Such issues were very serious because if only the Government of the United Kingdom could improve its record in that area and proceed with the adoption of a bill of rights, it would have achieved a position of some distinction in the area of human rights.

78. Another serious incident which marred the image of the United Kingdom with regard to its treatment of minorities, whether on the basis of colour or otherwise, was that of Joy Gardner. In enforcing her return to Jamaica, police had visited her residence and arrested her in circumstances which had led in a very short period to her death. From all the available evidence it seemed that the four and a half yards of tape they had used to gag her and prevent her biting the police officers, and which had caused her to die of suffocation, had been excessive. The persons charged had not been convicted and, according to a newspaper report, would not be disciplined. He wished to know what steps were being taken in the United Kingdom to avoid a recurrence of incidents like the two he had mentioned.

79. Mrs. MEDINA QUIROGA congratulated Mrs. Higgins on her appointment but said she was sad that her colleague would be leaving the Committee just as she herself had arrived; she had been hoping to learn a great deal from Mrs. Higgins.

80. As for the report of the United Kingdom, and the delegation's replies to the Committee's questions, she associated herself with what Ms. Evatt had said regarding the situation in Scotland, and wished to ask if the Government of the United Kingdom had a different position with regard to Scotland and article 1, and if so what were the reasons.

81. Mr. Halliday had said that incorporation of the Covenant in domestic legislation in the United Kingdom was neither necessary nor desirable, but in her view it was clearly necessary: one case with which she was familiar had demonstrated that the right to privacy was not established in United Kingdom legislation, and another had shown that discrimination as set forth in the Covenant was not prohibited.

82. The Committee had been told that the European Convention on Human Rights and the Covenant had often been used by the courts, but a study conducted by the Democratic Audit of the United Kingdom had found only 173 cases in England between 1972 and 1993 in which the European Convention on Human Rights had been cited either in the judgement or by counsel in pleadings. That represented only 0.2 per cent of all cases. A sample of 64 cases had been analysed in greater detail; it revealed that in only 27 of them - out of a total number of cases of 91,000 over the 21-year period - had the Convention had any impact on the case. In 11 of them it had been used to bolster the reasoning of judges and in 13 it had arguably influenced the majority judgement; 18 of the 27 cases had concerned freedom of expression, in which the legislation was in any event similar in the United Kingdom to that in the Convention. In only three cases could the Convention be said to have affected the outcome. Similar research had been conducted with regard to the Covenant; revealing that it had been referred to in only 10 cases - 0.01 per cent of the total - five of which had involved the payment of compensation with regard to miscarriages of justice following statements by the Home Secretary.

In her view it was evident that incorporation was necessary. As for its desirability, the citizens of the United Kingdom presumably wanted greater safeguards for their human rights, and she therefore concluded, that desirability was being considered from the point of view of the Government. Moreover, the fact that Parliament in the United Kingdom could take away people's rights also placed human rights in a precarious position which was alien to their very nature.

83. There was almost no mention in the report of domestic violence and rape, upon which she had received a great deal of material; she requested more information from the delegation. She associated herself with the concerns expressed about Northern Ireland, notably by Mrs. Chanet and Mr. Klein, and asked why, in view of the 10-month truce in the province, emergency legislation was still in force and the human rights situation there had not improved.

84. Mr. POCAR said he had joined the Committee at the same time as Mrs. Higgins and had seen her prodigious contribution to its jurisprudence and procedures over the past 10 years. She was always ready to assist her colleagues, and her departure would be a great loss; however, the Committee had been fortunate in having her as a member, and was proud that she had been chosen to sit in the main international legal body.

85. As for the report of the United Kingdom, he said he was not convinced by Mr. Halliday's reasons for not incorporating the Covenant into domestic legislation and for not ratifying the Optional Protocol. Non-incorporation did not prevent courts from referring to international legal instruments on human rights, and the report gave examples of court decisions in which the European Convention on Human Rights had been reflected. He wondered to what extent that was a consequence of the fact that further international scrutiny of the application of the provisions of the European Convention was available to individuals in the United Kingdom. No example was given in the report of decisions in which the Covenant had been reflected. In other words, non-incorporation might not be an obstacle to reference by the courts to international human rights instruments, but the availability of access to additional means of redress at the international level provided for additional safeguards for an individual's human rights. That was also the view of the Government of the United Kingdom, as reflected in the report, and he perceived a contradiction in the reasoning followed in the report with regard to the Optional Protocol. On the one hand, it was recognized that the procedures under the European Convention on Human Rights provided for additional safeguards; on the other hand, the report and the delegation had stated that the procedure under the Optional Protocol would not significantly enhance the protection of individual human rights. The two instruments did not cover precisely the same area, indeed contained important differences, and it was difficult to accept that accession to the Optional Protocol would not provide for additional safeguards which would in fact, in his view, represent an important enhancement of the protection of individual rights. Article 26 of the Covenant provided for the independent right to equality before the law and equal protection of the law, and that was not provided for in the European Convention on Human Rights. That right was fully recognized in the established tradition of the common law in the United Kingdom, as stated in

paragraph 483 of the report, but its application would certainly benefit from the additional scrutiny available to individuals under the Optional Protocol, as had been the case in a number of other European countries.

86. He agreed with Mr. Lallah that it was not acceptable that the report, which was in many respects a very good one, should devote only a few lines to article 26. That was an important article which had been ignored altogether in the third periodic report. In fact, some paragraphs did refer to the area covered by article 26, such as discrimination in employment which had been referred to under article 2. He would welcome an explanation from the delegation as to why article 26 was constantly disregarded in United Kingdom reports.

87. Mr. BUERGENTHAL said he was sad that Mrs. Higgins was leaving the Committee, but was sure she would bring a welcome breath of fresh air to the ICJ. He congratulated the Government of the United Kingdom on its good judgement in nominating her.

88. As for the report of the United Kingdom, he shared many of the criticisms expressed by other members of the Committee. However, it had to be recognized that there were important and valuable human rights safeguards in the United Kingdom, and new legislation had indicated a continuing effort to improve them; there was a natural tendency for the Committee to focus on negative aspects, and to take positive ones for granted.

89. During a recent visit to the United Kingdom, he had been dismayed to read in the press of a statement made by the Metropolitan Police Commissioner to the effect that black youths as a group accounted for the majority of crime in London. The Commissioner had been strongly supported in that regard by the Home Secretary. He (Mr. Buergenthal) considered that such statements by government officials, especially if they were capable of being misunderstood or distorted, did not contribute to the creation of a climate of racial harmony in a multiracial State, and he wondered what efforts the Government and the local authorities were making to ensure that such statements did not result in future police measures against minority groups based on what were unjustified presumptions that, for example, young blacks were prima facie suspects.

90. As for non-incorporation of the Covenant and non-ratification of the Optional Protocol, he wished to point out that he had always opposed the position of the Government of the United States in respect of its own failure to ratify the Optional Protocol. In the case of the United Kingdom, it was important not to divorce non-incorporation of the Covenant from the European Convention on Human Rights. The fact was that the United Kingdom had lost many cases in the European Court of Human Rights, largely because neither the European Convention nor the Covenant created the formal cause of action in the United Kingdom, although, of course, cases could be cited. For every one of the cases the United Kingdom had lost in the European Court there had been many earlier victims of the same objectionable legislation or government action who had not appealed to the European Court and consequently remained without remedy but who might have had redress if the courts had had the

opportunity to apply the Convention in the first place. What happened to such prior victims, and was any thought being given to retroactive legislation in such cases?

91. Mr. PRADO VALLEJO said he was very sad that Mrs. Higgins would be leaving the Committee. He had a degree of responsibility for her departure since Ecuador had been one of the first countries to support her nomination to the ICJ.

92. As for the report of the United Kingdom, he was concerned that the Government never seemed to take up any of the comments made by the Committee. Some 22 European countries had now ratified the Optional Protocol, but the Government of the United Kingdom always gave the Committee the same reasons for not doing so and for not incorporating the Covenant into domestic legislation. He had reason to believe that the report had not been made available to NGOs for comment, and he wondered why that had not been done, and what restrictions had been placed on its publication.

93. Legislation on freedom of religious belief was not applied throughout the United Kingdom, notably with regard to employment and notably in Northern Ireland; he sought clarification from the delegation regarding discrimination on grounds of religious belief. There had also been recent examples of restrictions being placed on the family life of Gypsies, who had complained that their cultural life was in jeopardy as a result. Article 2 stated that the rights recognized in the Covenant were to be respected and ensured to all individuals within the territory of the State party and subject to its jurisdiction without distinction of any kind, but refugees did not in the United Kingdom have the same right of recourse to the courts, and the conditions in the detention centres where they were held pending decisions regarding applications for asylum were very degrading. They had no right of appeal. He requested clarification from the United Kingdom delegation regarding the rights of refugees.

The meeting rose at 1 p.m.